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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,008	03/17/2004	Jean-Jacques Flat	FR-AM 1939 NP	4389

31684 7590 03/15/2005

ARKEMA INC.  
PATENT DEPARTMENT - 26TH FLOOR  
2000 MARKET STREET  
PHILADELPHIA, PA 19103-3222

EXAMINER
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WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,008

Applicant(s)

FLAT, JEAN-JACQUES

Examiner

Ana L. Woodward

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/17/2004
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) 2-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s)        is/are allowed.
- 6) ☒ Claim(s) 1, 7-9 and 11 is/are rejected.
- 7) ☐ Claim(s)        is/are objected to.
- 8) ☒ Claim(s) 1-9 and 11 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on        is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No.       .
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/17/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1-9 and 11 are generic to a plurality of disclosed patentably distinct species comprising the various materials embraced by the polyolefin component (B). The election of an ultimate species of component (B) is requested. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Thomas F. Roland on March 4, 2005 a provisional election was made with traverse to prosecute the invention comprising high density polyethylene as the ultimate species defining component (B), claims 1, 7-9 and 11 are. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-6 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 102/103***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. 6,060,549 (Li et al).

Li et al disclose toughened nanocomposite materials based on a blend of one or more thermoplastic engineering resins and uniformly dispersed exfoliated phyllosilicate layered clay. The examples demonstrate compositions comprising polyamide, reading on applicants' component (A), a brominated isobutylene/para-methylstyrene elastomer, reading on applicant's generically recited component (B) and montmorillonite clay, reading on applicants' nanofiller. Note that the clay filler has average diameters between about 50 Å and about 10,000 Å and, thus, meets the nanoscale dimensions of the present claims. The disclosure of the reference meets the requirements of the present claims in terms of the types of materials added and their contents. The onus is shifted to applicants to establish that the product of the present claims is not the same as or obvious from that set forth by the reference.

***Claim Rejections - 35 USC § 103***

5. Claims 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,060,549 (Li et al), described hereinabove.

The composition of the reference may be extruded, compression molded, blow molded or injection molded into various shaped articles including films, packaging and the like.

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Accordingly, the presently claimed articles would have been obvious embodiments of the general disclosure of the reference to one having ordinary skill in the art.

***Claim Objections***

6. The numbering of claim 11 is queried given that there is no claim 10 present.

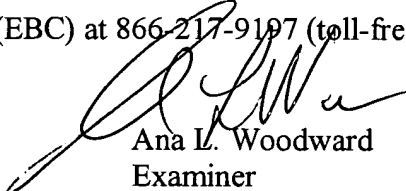
Appropriate correction is requested

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (571) 272-1082. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ana L. Woodward  
Examiner  
Art Unit 1711

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